IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ENERGY AUTOMATION SYSTEMS, INC.,	)	
Plaintiff,	)	
v.	)	**CIVIL ACTION NO. _________**
XCENTRIC VENTURES, LLC, d/b/a BADBUSINESS BUREAU and/or BADBUSINESSBUREAU.COM and/or RIP-OFF REPORT and/or RIPOFFREPORT.COM, and EDWARD MAGEDSON a/k/a ED MAGEDSON,	)	**JURY DEMAND**
Defendants.	)	

COMPLAINT

Plaintiff, Energy Automation Systems, Inc. ("EASI"), for its Complaint against Defendants, Xcentric Ventures, LLC, d/b/a Badbusiness Bureau and/or badbusinessbureau.com and/or Rip-Off Report and/or ripoffreport.com ("Xcentric") and Edward Magedson a/k/a Ed Magedson ("Magedson"), states as follows:

PARTIES, JURISDICTION AND VENUE

1. EASI is a corporation organized and existing under the laws of the State of Tennessee and is, therefore, a citizen of Tennessee and of no other state.

2. Xcentric is a limited liability company organized and existing under the laws of Arizona with its principal office located in Arizona. Xcentric is a citizen, therefore, of Arizona and of no other state. The domain names of ripoffreport.com and badbusinessbureau.com (the

"Websites") are registered to Xcentric. Xcentric also receives donations provided to support the Websites.

3. Magedson is a citizen and resident of Arizona and of no other state.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship and the matter in controversy, exclusive of interest and costs, exceeds the sum or value of Seventy-Five Thousand Dollars ($75,000.00). In addition, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, because claims arise under section 43 of the Lanham Act, codified at 15 U.S.C. § 1125, and sections 1962(c) and 1962(d) of the Racketeer Influenced and Corrupt Organizations Act (RICO), codified at 18 U.S.C. §§ 1962(c), 1962(d)), and.

5. This Court has personal jurisdiction over Defendants because they: (1) direct tortious conduct at EASI, which maintains its principal place of business in this judicial district; and (2) operate a commercial, interactive website in this judicial district. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendants' unlawful conduct substantially occurs in this judicial district and Defendants solicit and engage in business within this judicial district.

II. FACTUAL ALLEGATIONS

6. EASI is a Tennessee business engaged in the distribution of equipment which reduces the volume of electricity consumed by electric motors, lighting equipment, air conditioning and refrigeration equipment, and other machinery and equipment powered by electricity. While EASI engages in some direct sales to end-users, the substantial majority of its products are sold through a network of authorized resellers with whom EASI enters into a contractual relationship (the "EASI dealers"). All EASI dealers are parties to mutually binding written contracts between EASI and the dealers.

7. Because the substantial majority of EASI's products are sold through EASI's dealers, it is vitally important to EASI's business that EASI maintain good relations with its dealers, and that the dealers remain active and productive participants in the distribution of EASI's products. EASI has gone to considerable expense and effort to develop and maintain its dealer network and devotes the substantial majority of the company's staff-hours every working day to supporting and assisting its dealers in the marketing and distribution of EASI's products.

8. EASI regularly undertakes to expand the size of and improve the quality of its dealer network. To further that objective, EASI regularly seeks out qualified candidates to become EASI dealers, and responds to communications received from parties who have expressed an interest in becoming EASI dealers. EASI regularly conducts dealer training and orientation sessions, in which both prospective and actual EASI dealers are provided information and instructions concerning EASI's products, and concerning the customary methods utilized by EASI and its dealers for the distribution of those products. EASI also markets the dealership opportunity on the Internet.

9. By his own admission, Magedson started two identical commercial and interactive websites, ripoffreport.com and badbusinessbureau.com, both of which contain identical content. On information and belief, Magedson and Xcentric actively control and maintain the Websites, together with the assistance of one or more unknown agents.

10. The Websites purport to expose companies and individuals who "ripoff" customers. Defendants actively solicit and receive complaints – so called "Rip-off Reports" – from all over the country, including Tennessee. Defendants have edited and published well over a thousand reports directed at Tennessee companies (at least twenty of which concern EASI), some of which were purportedly authored by Tennessee residents.

11. Defendants have developed, created, written and published on the Websites in the form of report titles, various headings, and editorial messages numerous false and deceptively misleading statements of fact concerning EASI, its dealerships, and its employees. Defendants authored and published titles, various headings, or editorial messages, stating that EASI is a "corrupt compan[y]." Defendants authored and published titles, various headings, or editorial messages, stating that EASI's dealerships are a "complete" and "long running" "scam." Defendants authored and published titles, various headings, or editorial messages, stating that EASI is a "damn scam ripoff business from hell." Defendants authored and published titles, various headings, or editorial messages, stating that EASI's Chief Executive Officer is a "consumer fraud ripoff artist con man." Defendants authored and published titles, various headings, or editorial messages, stating that EASI's Chief Executive Officer and other employees are "crooked" and "crooks." Defendants authored and published titles, various headings, or editorial messages, stating that "EASI likes to threaten anyone that complains whether dealer or ex-employee." Defendants' authored and

published titles, various headings, or editorial messages, stating that EASI has engaged in "fraud." In developing, creating, writing and publishing on the Websites in the form of report titles, various headings, and editorial messages numerous false and deceptively misleading statements of fact concerning EASI, its dealerships, and its employees, Defendants have produced original content contained in the so-called "Rip-off Reports" found on the Websites.

12. Defendants have also solicited, developed, and published on the Websites numerous false and deceptively misleading statements of fact concerning EASI, its dealerships, and its employees made at least in part by a few disgruntled former EASI dealers using different pseudonyms to disparage EASI and to create the appearance that numerous dealers are unhappy with EASI.

13. Defendants, presumably with the aid of unknown agents, have created the "Rip-off Report Corporate Advocacy Business Remediation & Customer Satisfaction Program." Through this so-called program, Defendants offer to resolve disputes between targeted companies and complainants regarding published "Rip-off Reports" on the Websites if the targeted company pays Defendants a sum of money. This so-called service is offered on the Websites.

14. EASI founder and Chief Executive Officer Joseph Merlo, who resides in Tennessee, contacted Magedson via email and informed him of the presence of numerous false and misleading statements on the Websites regarding EASI, its dealerships, and its employees. Mr. Merlo offered to prove the falsity of many of the statements with sworn testimony of the person who admitted to submitting the messages to Defendants. Mr. Merlo asked that the false and misleading statements be removed from the Websites. In a series of emails, Magedson refused to remove the false and misleading statements and instead demanded payment for remedying the falsities pursuant to the

"Rip-off Report Corporate Advocacy Business Remediation & Customer Satisfaction Program" offered on the Websites. Mr. Merlo declined the offer to pay for this so-called service.

15. Defendants' Websites are commercial in nature in that they, among other things, advertise, promote and offer to sell to Tennessee residents and others Defendants' purported consumer advocacy publication the "Rip-Off Revenge Guide" for $21.95. On the Websites, Defendants also actively solicit and receive donations from all over the country, including Tennessee.

16. The postings on the Websites have disrupted and threaten to disrupt EASI's ability to conduct business in that prospective dealers use Internet search engines to find information about EASI, but then discover the false postings regarding EASI. EASI must respond to these false, misleading, disparaging and/or defamatory comments and allegations in its dealings with existing and prospective customers and dealers. EASI may not have the opportunity to respond to every person who accesses the Websites because EASI does not know the identities of persons who access the Websites and review the false information. Defendants' conduct has caused EASI to lose at least two dealership sales, which individually sell for approximately $40,000.00, and has damaged EASI's business and reputation.

17. Defendants continue to pose a threat of harming EASI and its business through the creation, publishing, and transmission of false and defamatory statements regarding EASI, its dealerships, its Chief Executive Officer, its management and/or employees. Defendants have refused to comply with EASI's requests to remove the false postings and to delete every false statement of fact about or concerning EASI's business. Without knowing the identity of some of the presently unknown sources of such information, EASI does not have the ability to prevent Defendants and

others from disseminating such false, misleading, disparaging and/or defamatory comments and allegations to third parties.

COUNT I
(Defamation)

18. EASI incorporates by reference the above paragraphs of this Complaint as if set forth in full and makes the following allegations.

19. Defendants have developed, created, solicited, and published false statements on the Websites about EASI, its dealerships, and its employees with knowledge that the statements are false and defamatory or with reckless disregard for the truth of the statements or with negligence in failing to ascertain the truth of the statements.

20. Such statements include that EASI is a "corrupt compan[y]," that EASI dealerships are a "scam," and that EASI's Chief Executive Officer and fellow employees are "crooked" and "crooks."

21. The statements have caused EASI to lose at least two dealership sales and have damaged EASI's business and reputation. Defendants' unlawful conduct has damaged EASI, in an amount to be determined at trial, and entitles EASI to compensatory and punitive damages.

22. Because its remedy at law is inadequate, EASI seeks preliminary and permanent injunctive relief to protect its reputation and interests. Unless Defendants are restrained and enjoined, Defendants will continue to harm EASI irreparably, thereby further damaging EASI and impairing EASI's business reputation and activities.

COUNT II
(Violation of the Tennessee Consumer Protection Act, T.C.A. §§ 47-18-101, et seq.)

23. EASI incorporates by reference the above paragraphs of this Complaint as if set forth in full and makes the following allegations.

24. Defendants have made false and misleading representations of fact on the Websites that disparage EASI and its dealerships. Defendants have represented that EASI's dealerships and services are of a lower standard, quality, or grade than is in fact the case. Defendants' publishing of false and misleading statements about EASI on the Websites is deceptive to the consumer and to the general public, in violation of T.C.A. § 47-18-104.

25. Defendants' willful and intentional unfair and deceptive acts and practices affecting the conduct of trade and commerce have caused EASI a loss of money and other value in the form of at least two lost dealership sales and damage to EASI's business and reputation.

26. Pursuant to T.C.A. §§ 47-18-108 and 109, Plaintiff is entitled to recover its actual damages, treble damages and attorneys' fees and costs. Plaintiff is also entitled to a preliminary and permanent injunction to prevent those deceptive acts and practices.

COUNT III
(Interference with Business Relations)

27. EASI incorporates by reference the above paragraphs of this Complaint as if set forth in full and makes the following allegations.

28. Defendants have created, solicited, and published on the Websites false and defamatory statements regarding EASI that have interfered with EASI's business relationships with its current and potential customers.

29. These false and defamatory statements have been communicated with the knowledge that dealers and potential dealers had an existing or prospective business relationship with EASI and with the intention of interfering with that relationship.

30. Defendants' wrongful interference with EASI's business relations has been willful and deliberate and has caused EASI to incur loss and damages.

31. Defendants' tortious interference with EASI's business relations entitles EASI to compensatory and punitive damages in an amount to be determined at trial.

COUNT IV
(Civil Conspiracy)

32. EASI incorporates by reference the above paragraphs of this Complaint as if set forth in full and makes the following allegations.

33. Defendants and unknown agents have had a common design by means of concerted action to solicit, develop, create, and publish on the Websites false and misleading statements regarding EASI and its dealerships.

34. Defendants and unknown agents have solicited, developed, created, and published on the Websites such false and misleading statements.

35. Defendants and unknown agents have created the "Rip-off Report Corporate Advocacy Business Remediation & Customer Satisfaction Program." Through this so-called "program," Defendants offer to attempt to resolve disputes between targeted companies and complainants regarding published "Rip-off Reports" on the Websites. This so-called service is offered on the Websites.

36. EASI founder and Chief Executive Officer Joseph Merlo informed Magedson of false statements regarding EASI, its employees, and its dealerships on the Websites. Mr. Merlo offered to prove the falsity of many of the statements with sworn testimony of the person who supplied the messages on the Websites.

37. Magedson demanded payment and participation in the Defendants' "Rip-off Report Corporate Advocacy Business Remediation & Customer Satisfaction Program" before taking any action to remedy the false and misleading statements.

38. These actions constitute a civil conspiracy to use coercion to obtain EASI's property. These actions also constitute a civil conspiracy to create, solicit, and publish defamatory, false, or misleading statements regarding EASI, its dealerships, and its employees. These actions have caused EASI to incur loss and damages and entitle EASI to compensatory and punitive damages in an amount to be determined at trial.

COUNT V
(Violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962(c))

39. EASI incorporates by reference the above paragraphs of this Complaint as if set forth in full and makes the following allegations.

40. Xcentric is a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c).

41. Magedson is a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c).

42. Xcentric is an "enterprise" within the meaning of 18 U.S.C. § 1961(4) and 1962(c), which enterprise was engaged in and the activities of which affected interstate commerce during the relevant times.

43. Magedson was employed by or associated with an enterprise, Xcentric, and did conduct or participate, directly or indirectly, in the conduct of the affairs of Xcentric through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1)(B) and 1961(5) and 1962(c), to wit:

(a) Defendants have repeatedly attempted to obtain EASI's property, with its consent, through wrongful use of actual or threatened fear by requiring payment to remedy the publication of false and defamatory statements that Defendants created and/or solicited. This conduct amounts to extortion under 18 U.S.C. § 1951(b)(2).

(b) Defendants have repeatedly and intentionally used their Websites as a scheme to obtain money from EASI and other companies by means of false and defamatory complaints created or solicited by Defendants. Defendants have repeatedly created, solicited, and published false and defamatory statements on the Websites and sent emails requesting that EASI pay a fee before Defendants would take any action related to the material on the website. This conduct amounts to wire fraud under 18 U.S.C. § 1343.

44. Defendants' violation of 18 U.S.C. § 1962(c) has caused EASI to lose at least two dealership sales and has damaged EASI's business and reputation. Defendants' unlawful conduct has caused damages to EASI, in an amount to be determined at trial, and threatens to cause additional damage. Plaintiff seeks three times its actual damages sustained, as well as other relief which is necessary and proper, including reasonable attorneys' fees and costs.

45. Because its remedy at law is inadequate, EASI seeks preliminary and permanent injunctive relief to protect its reputation and interests. Unless Defendants are restrained and enjoined, Defendants and anonymous sources making false representations of fact about EASI will

continue to harm EASI irreparably, thereby further damaging EASI and impairing EASI's business reputation and activities.

COUNT VI
(Violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962(d))

46. EASI incorporates by reference the above paragraphs of this Complaint as if set forth in full and makes the following allegations.

47. Xcentric is a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c).

48. Magedson is a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c).

49. Xcentric is an "enterprise" within the meaning of 18 U.S.C. § 1961(4) and 1962(c), which enterprise was engaged in and the activities of which affected interstate commerce during the relevant times.

50. Magedson is employed by or associated with an enterprise, Xcentric, and conspired with Xcentric within the meaning of 18 U.S.C. § 1962(d) to violate 18 U.S.C. § 1962(c). Defendants and one or more unknown agents did conspire to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1)(B) and 1961(5) and 1962(c), to wit:

(a) Defendants have repeatedly attempted to obtain EASI's property, with its consent, through wrongful use of actual or threatened fear by requiring payment to remedy the publication of false and defamatory statements that Defendants created and/or solicited. This conduct amounts to extortion under 18 U.S.C. § 1951(b)(2).

(b) Defendants have repeatedly and intentionally used their Websites as a scheme to obtain money from EASI and other companies by means of false and defamatory complaints created or solicited by Defendants. Defendants have repeatedly created, solicited, and published false and defamatory statements on the Websites and sent emails requesting that EASI pay a fee before Defendants would take any action related to the material on the website. This conduct amounts to wire fraud under 18 U.S.C. § 1343.

51. Defendants' violation of 18 U.S.C. § 1962(d) has caused EASI to lose at least two dealership sales and has damaged EASI's business and reputation. Defendants' unlawful conduct has caused damages to EASI, in an amount to be determined at trial, and threatens to cause additional damage. Plaintiff seeks three times its actual damages sustained, as well as other relief which is necessary and proper, including reasonable attorneys' fees and costs.

52. Because its remedy at law is inadequate, EASI seeks preliminary and permanent injunctive relief to protect its reputation and interests. Unless Defendants are restrained and enjoined, Defendants and anonymous sources making false representations of fact about EASI will continue to harm EASI irreparably, thereby further damaging EASI and impairing EASI's business reputation and activities.

WHEREFORE, Plaintiff demands judgment awarding the following relief:

1. compensatory damages in an amount to be established at trial;

2. for violations of section 43 of the Lanham Act, codified at 15 U.S.C. § 1125, sections 1962(c) and 1962(d) of the Racketeer Influenced and Corrupt Organizations Act (RICO), codified at 18 U.S.C. §§ 1962(c) and 1962(d), and T.C.A. §§ 47-18-108 and 109 of the Tennessee Consumer Protection Act, three times Plaintiff's actual damages;

3. punitive damages;

4. attorneys' fees and costs;

5. a preliminary injunction requiring Defendants to remove from the Websites any false and defamatory statements concerning EASI, its dealerships, or its employees, and prohibiting Defendants from later publishing such statements on the Websites;

6. a permanent injunction requiring Defendants to remove from the Websites any false and defamatory statements concerning EASI, its dealerships, or its employees, and prohibiting Defendants from later publishing such statements on the Websites; and

7. for such other and further general relief which may be appropriate.

JURY DEMAND

Plaintiff demands a jury to try this cause.

John R. Jacobson
William L. Campbell, Jr.
W. Russell Taber
BOWEN RILEY WARNOCK & JACOBSON, PLC
1906 West End Avenue
Nashville, TN 37203
(615) 320-3700

Attorneys for Plaintiff